



Paper No. 6

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OFFICE OF PETITIONS

In re Application of :
Marco Guida, Jeff Hall, :
William Petros, James Vredenburgh, :
Oliver Colvin and Jeffrey Marks :
Application No. 10/085,612 :
Filed: February 26, 2002 :
Title: METHODS FOR EVALUATING THE :
ABILITY TO METABOLIZE :
PHARMACEUTICALS AND COMPOSITIONS :
THEREFOR :

DECISION ACCORDING STATUS
UNDER 37 C.F.R. §1.47(a)

This is a decision on the "Petition under 37 C.F.R. §1.47(a) and Request for Status under 37 CFR 1.42," filed July 8, 2002.

The petition under §1.47(a) is **GRANTED**.

Petitioner is advised that no consideration has been given to the "Request for Status under 37 CFR 1.42," referenced in the petition title. Petitioner has submitted no fee for such consideration. More significantly, petitioner has submitted no arguments or evidence in support of a conclusion that any of the inventors, including non-signing inventor Guida, are deceased. Accordingly, it is presumed that the reference to §1.42 in the petition title is a clerical error. **If this presumption is incorrect, petitioner must file a new petition under §1.42 for such consideration.** Petitioner is further advised that §1.47 is not applicable as a means for accepting a declaration without the signature of a deceased inventor.

The above-identified application was filed on February 26, 2002, without an executed oath or declaration. Marco Guida, Jeff Hall, William Petros, James Vredenburgh, Oliver Colvin and Jeffrey Marks were named as joint inventors. Accordingly, on April 8, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration, and a surcharge for late filing. This Notice set a period for reply of two months from the mailing date of the notice, with extensions of time obtainable under §1.136(a).

On July 8, 2002, applicants responded with the instant petition, made timely by an accompanying petition (and fee) for extension of time for response within the first month; two declarations executed in combination by joint inventors Hall, Petros, Vredenburgh, Colvin and Marks on behalf of themselves and on behalf of non-signing inventor Guida; and payment of the surcharge for late filing of the declaration.

Rule 47 applicant maintains that status under 37 CFR 1.47(a) is proper because joint inventor Marco Guida refuses to join in the application for patent. A grantable petition under 37 CFR

1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. On petition, patent attorney Robert Traver provides the last known address of inventor Guida and states that the inventor has been presented the application papers by certified mail and has by his conduct in not responding refused to sign the declaration. Attorney Traver has made of record a copy of the certified mail letter transmitting all of the application papers to the inventor, along with a Federal Express return envelope; as well as, a copy of the certified mail return receipt signed by inventor Guida on June 7, 2002.

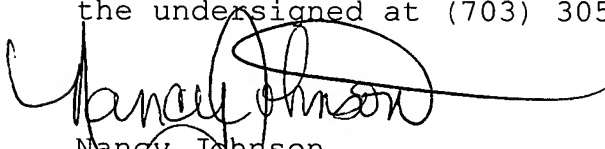
The declaration filed July 8, 2002, and the petition have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.



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Office of the Deputy Commissioner
for Patent Examination Policy